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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

12	ROBERT JACOBSEN,)	Case No. C 06 1905 JSW
13	Plaintiff,)	OPPOSITION BY DEFENDANT
14	vs.)	KEVIN RUSSELL TO
15	MATTHEW KATZER, KAMIND)	ADMINISTRATIVE MOTION
16	ASSOCIATES, INC., and KEVIN)	Dept: Courtroom 2, 17th floor
17	RUSSELL,)	Hon. Jeffrey S. White
	Defendants.)	

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STATEMENT OF FACTS

Russell filed a special motion to strike (“SLAPP motion”). Cal Code Civ. Proc., § 425.16. That motion has been pending more than two months and was fully briefed as of June 16, 2006. Plaintiff’s administrative motion seeks to substitute a new document for his opposition to Russell’s SLAPP motion. Plaintiff does not clearly describe the changes he seeks to make. The proposed amended or substituted opposition memorandum differs from plaintiff’s original opposition in the following respects *only*:

1. It deletes the fifth and sixth sentences in the first paragraph on Page 13, appearing at Lines 7 through 12, in which Jacobsen concedes that if Russell’s allegedly libelous FOIA request is within the protection of the SLAPP statute it is also privileged, and

2. It incorporates about 1 ½ pages of argument copied *verbatim* from Jacobsen’s opposition to Russell’s Motion to Dismiss, (beginning at page 7, Line 25, and ending at Page 9, Line 21), into the proposed new memorandum (beginning at Page 13, Line 12, and ending at Page 15, Line 17). The resulting document is confusing, as it contains arguments that are responsive to Russell’s motion to dismiss but not his motion to strike.¹ It is also longer than the 15 page limit permits.

ARGUMENT

The proposed amended memorandum was not drafted with care. It is confusing because it incorporates arguments not responsive to Russell’s SLAPP motion. It contains arguments not addressed in Russell’s reply and may require an additional administrative motion so that Russell may amend his reply. It is calculated to cause delay.

The proposed amendment does noting to advance Jacobsen’s substantive case. Jacobsen primarily seeks to withdraw his admission that if Russell’s allegedly libelous

¹ To cite only one example, the motion to strike does “characterize[] Mr. Jacobsen’s claim as one for trade libel,” as stated in the proposed amendment, Page 14, Line 19.

1 FOIA request is a protected activity within the meaning of California’s SLAPP statute, it
2 is also necessarily privileged under California Civil Code § 47(b). (Opp., 13:7-12.)
3 Russell will stipulate that said statement is legally erroneous and may be stricken out. As
4 shown in Russell’s reply, the scope of the SLAPP statute’s protection is in fact *far*
5 *broader* than the litigation privilege. All of Jacobsen’s additional text is copied, word for
6 word, from his opposition to Russell’s motion to dismiss, are already before the Court,
7 and are set for hearing on the same date as Russell’s SLAPP motion. They will be
8 considered. Jacobsen has no need to present these identical arguments twice.

9 Finally, if Jacobsen had good cause to inject additional arguments at this stage-- as
10 he does *not*--he should have requested leave to file a sur-reply rather than the disruptive
11 alternative of an “amended” opposition requiring an amended reply. Russell objects to
12 this disruptive tactic. Russell further objects to the unwarranted length of Jacobsen’s 8-
13 page administrative motion and its unnecessary insulting rhetoric.

14 Dated: July 24, 2006 Law Offices of David M. Zeff

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16 By _____/S/_____
17 David M. Zeff, Attorneys For
18 Defendant Kevin Russell
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